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IT IS SO ORDERED.

Dated: June 15, 2012



Charles M. Caldwell
Charles M. Caldwell
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re	:	Case No. 08-60579
	:	
Michael McCord,	:	Chapter 11
	:	
Debtor.	:	Judge Charles M. Caldwell

**AGREED ORDER ON MOTIONS OF AMERICAN TAX FUNDING, LLC
FOR RELIEF FROM STAY OF 1459-1473 ORCHARD PARK DRIVE,
AND 1441-1455 ORCHARD PARK DRIVE, COLUMBUS, OHIO AND
BENCHMARK BANK TO RECEIVE DEBTOR REPORTS**
[Rel. Doc. Nos. 437, 441, 452 and 453; and Rel. Doc. Nos. 446, 457 and 458]

This matter comes before the Court pursuant to the *Motion of American Tax Funding LLC for Relief From Stay of 1459-1473 Orchard Park Dr., Columbus, Ohio* [Docket No. 441] and the *Motion of American Tax Funding LLC for Relief From Stay of 1441-1455 Orchard Park Dr., Columbus, Ohio* [Docket No. 446] (collectively, the “Motions”). In the Third Amended Plan and elsewhere 1459-1473 Orchard Park is sometimes referred to as “Orchard Park One”; and 1441-1455 Orchard Park is sometimes referred to as “Orchard Park Two”.] Benchmark Bank

(“Benchmark”) and the Debtor, Michael McCord, each filed memoranda opposing the relief sought by the Motion as to 1459-1473 Orchard Park (Orchard Park One). See, Doc. Nos. 453 and 452, respectively. The Debtor also filed a memorandum opposing the relief sought by the Motion as to 1441-1455 Orchard Park (Orchard Park Two). See, Doc. No. 457. The parties came before the Court for a hearing (the “Hearing”) on April 30, 2012 to consider the Motions, and at that time advised the Court that the parties had agreed to the resolution of the Motions. Accordingly, and based upon the signatures of the undersigned counsel, the Court hereby FINDS and ORDERS as follows:

1. The Motions of American Tax Funding are hereby GRANTED subject to the terms and conditions of this Agreed Order;

2. American Tax Funding LLC (“American Tax Funding”) shall withhold any execution, foreclosure or any other attempts to collect on a.) the Tax Certificate Nos. 010-181743-00-P1-0006-07 and 010-181743-00-S1-0006-08 (for the real estate at 1459-1473 Orchard Park, Franklin County, Ohio Auditor’s Tax Parcel No. 010-181743-00), and on b.) Tax Certificate Nos. 010-196511-00-P1-0006-07 and 010-196511-00-S1-0006-08 (for the real estate at 1441-1455 Orchard Park, Franklin County, Ohio Auditor’s Tax Parcel No. 010-196511-00) (the “Tax Certificates”), and c.) as well as any other tax certificate which American Tax Funding is the holder or owner of with respect to any real properties owned by the Debtor, Michael McCord, for a period of ninety (90) days following the entry of this Agreed Order;

3. On April 24, 2012, the debtor filed his *Status Report with Respect to Roof Repairs/Replacements* [Doc. No. 456] (the “Roof Report”) outlining those roofs on certain real properties owned by the Debtor which had, as of that date, been replaced and/or repaired. The only roofs which, as of the date of the Roof Report, had yet to be replaced and/or repaired were

those for the following real properties: 1469-1473 Orchard Park Drive (being a part of Orchard Park One), the “Orchard Park Property”), 1378-1380 Yorkland Road, and 1384-1386 Yorkland Road (the “Yorkland Properties”). Since the Hearing, the Debtor has completed the roof replacements and repairs associated with the Orchard Park Property, and has provided both Benchmark Bank and Columbus Ventures, LLC, as assignee of Fifth Third Bank (“Columbus Ventures”), with copies of invoices and receipts evidencing the costs of such replacement and repairs. Accordingly, the only remaining roofs to be replaced or repaired are those associated with the Yorkland Properties, and pursuant to the Roof Report the Debtor estimates such costs to complete the Yorkland Properties to be \$18,130 in the aggregate.¹

4. With respect to the Yorkland Properties, which properties serve as security for the obligations owed Columbus Ventures but not Benchmark Bank, that are still subject to such replacements and/or repairs, the Debtor is hereby authorized and directed to withdraw all remaining funds in the Fifth Third Escrow Eight Thousand Ninety Dollars (\$8,090) and Eleven Thousand Three Hundred and Ten Dollars (\$11,310) from the Benchmark Escrow to complete the work on the Yorkland Properties based on the Nineteen Thousand Two Hundred Dollars (\$19,200) estimate, plus \$200 for miscellaneous supplies or charges for the set amount to be disbursed for the Yorkland Properties roofs. The Debtor shall provide both Benchmark Bank and Columbus Ventures with all invoices and receipts evidencing all final costs for roof replacements and/or repairs on the Yorkland Properties with two (2) business days following completion.

¹ The Debtor estimated the cost to replace and repair the Orchard Park Property to be \$9,836.00. The actual cost to complete the Orchard Park Property was \$9,913.65. All costs to replace and repair all roofs, including the most recent Orchard Park Property, have been funded solely from the insurance proceeds deposited with Fifth Third Bank (the “Fifth Third Escrow”) in accordance with this Court’s earlier Order dated November 15, 2011. See Doc. No. 430. There remains on deposit in the demand deposit account associated with the Fifth Third Escrow approximately \$8,090.00. There also remains on deposit in excess of \$52,000 of insurance proceeds with Benchmark Bank (the “Benchmark Escrow”), none of which, to date, has been utilized for any roof replacements or repairs.

5. Benchmark Bank, pursuant to a prior order of this Court, is holding in escrow \$52,831.74 from certain insurance proceeds. After the Debtor's withdrawal of the Eleven Thousand Three Hundred and Ten Dollars (\$11,310) for the Yorkland Properties final roof costs as provided above, Benchmark Bank shall disburse the \$41,521.74 excess remaining insurance proceeds held in the Benchmark Bank escrowed insurance funds (the "Excess Insurance Proceeds") to American Tax Funding. American Tax Funding shall apply as follows:

a. First, for the cure any and all Plan payment defaults with respect to the Debtor's real property commonly known as 1459-1473 Orchard Park (Orchard Park One), Ohio Auditor's Tax Parcel 010-181743-00 to American Tax Funding in respect of its Tax Certificates associated with that property Certificate Nos. 010-181743-00-P1-0006-07 and 010 181743-00-S1-0006-08; and

b. Second for the cure of any and all Plan payment defaults with respect to the Debtor's real property commonly known as 6749-6759 Tussing Road (referred to in the Plan as "Tussing One") including

<u>Franklin County Auditor Parcel Nos.</u>	<u>Tussing Road Street Address</u>
530-206047	6749 Tussing
530-206048	6751
530-206049	6753
530-206050	6755
530-206051	6757
530-206052	6759

c. Third for the cure of any and all Plan payment defaults to American Tax Funding with respect to the Debtor's real property commonly known as 6765-6775 Tussing Road ("Tussing Road Two"), including

Franklin County Auditor Parcel Nos.	<u>Tussing Road Street Address</u>
530-206053	6765 Tussing
530-206054	6767
530-206055	6769
530-206056	6771
530-206057	6773
530-206058	6775

d. Fourth for the cure of any and all Plan payment defaults with respect to American Tax Funding in respect of its Tax Certificates associated with 1441-1455 Orchard Park Drive, Columbus, Ohio ("Orchard Park Two") including Franklin County, Ohio Auditor's Tax Parcel 010-196511 to American Tax Funding in respect of its Tax Certificates associated with that property Certificate Nos. 010-196511-00-P1-0006-07 and 010-196511-00-S1-006-08;

e. Fifth for the cure of any and all payment defaults under the Debtor's Third Amended Plan of Reorganization [Doc. No. 362] (the "Plan"), as confirmed by this Court, to American Tax Funding with respect to the Tax Certificates associated with the other McCord Property; **except not** as to

- the Debtor's 786 South Front Street real property, Franklin County, Ohio Auditor's Tax Parcel 010-006370, currently the subject of a foreclosure action,

- nor as to 1450-1454 E. Elaine Road (Franklin County Ohio Auditor's Tax Parcel 010-208503, as per the Third Amended Plan Elaine Road was to be auctioned.

f. The remaining balance, if any, of the Excess Insurance Proceeds disbursed by Benchmark Bank to American Tax Funding shall be applied to other remaining tax lien certificates held or otherwise owned by American Tax Funding with respect to those properties owned by the Debtor and in which both Columbus Ventures, LLC and Benchmark Bank both hold mortgage liens consisting, to be applied first to the Orchard Park One property, then to the Tussing One properties, and then to the Tussing Two properties.

6. This Court previously issued an Order [Document 437] dated December 10, 2011 setting forth specific procedures for the Fifth Third Bank Escrow and the Benchmark Escrow and roof repairs. In the event of any conflict between that December Order and this Order *as to distributions of escrows and roof repair matters*, this Order supersedes any conflicting terms in the December 10, 2011 Order.

7. The Debtor shall forthwith obtain property tax certificate payoffs and submit them to Counsel for Benchmark Bank and Counsel for Fifth Third Bank or Counsel for Fifth Third Banks successors or assignees.

IT IS SO ORDERED.

/s/ Richard K. Stovall

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Copies to: Default List

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